

37 Am. Jur. 2d Fraud and Deceit § 19

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

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I. Overview

B. Nature and Effect

§ 19. Legislation; provisions against fraud

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West's Key Number Digest

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Criminal liability for theft of, interference with, or unauthorized use of, computer programs, files, or systems, 51 A.L.R.4th 971

Giving false information to federal department or agency as violation of 18 U.S.C.A. sec. 1001, making it criminal offense to make false statements in any matter under jurisdiction of department or agency of United States, 111 A.L.R. Fed. 295

What statements fall within exculpatory denial exception to prohibition, under 18 U.S.C.A. sec. 1001, against knowingly and willfully making false statement which is material to matter within jurisdiction of department or agency of United States, 102 A.L.R. Fed. 742

What constitutes violation of federal bank fraud statute (18 U.S.C.A. sec. 1344), 99 A.L.R. Fed. 888

Effect upon prior convictions of McNally v. United States rule that mail fraud statute (18 U.S.C.A. sec. 1341) is directed solely at deprivation of property rights, 97 A.L.R. Fed. 797

What constitutes a "material" fact for purposes of 18 U.S.C.A. sec. 1001, relating to falsifying or concealing facts in matter within jurisdiction of United States department or agency, 49 A.L.R. Fed. 622

Trial Strategy

Liability of Seller in Residential Real Estate Transaction for Misrepresentation Under "As Is" Contract, 59 Am. Jur. Proof of Facts 3d 463

Under the police power, the legislature may provide against frauds upon the public.¹ A state consumer fraud statute and a cause of action for legal fraud under the common law are both aimed at prohibiting misrepresentations upon which others rely.²

Observation:

Statutory enactments may also modify the common law, or, in the alternative, address particular aspects of fraud, so that the elements may not necessarily be the same to prove fraud under the common law and the statute. Thus, under the common law on fraudulent inducement, the element of intent embraces the question of whether the declarant intended that a false representation be acted upon while under statutory provisions on fraudulent inducement, the element of intent embraces the question of whether the declarant made the representation for the purpose of inducing a person to enter into a contract.³

There are numerous federal statutes on fraud and deceit.⁴

Observation:

The question whether an employer's alleged false statement to an employee that it is not considering early-retirement incentives constitutes a misrepresentation under state law is determined by the state's common law and not by the test developed in the ERISA context under which an employer breaches its fiduciary duty if it misrepresents to employees that no change in benefits is forthcoming when in fact it has such a change under serious consideration.⁵

There are statutes that create a presumption of fraud under certain circumstances, and such statutes are generally upheld if the inference is not merely arbitrary, and there is a rational relationship between the facts of which the proof of one is made prima facie evidence of the other.⁶

The Uniform Commercial Code stipulates that unless displaced by particular provisions of the Code, the law relative to fraud and misrepresentation supplements its provisions.⁷

CUMULATIVE SUPPLEMENT

Cases:

Jury's finding of fraudulent intent, as required for conviction of group-home owner for conspiracy to commit health care fraud, was supported by sufficient evidence, including evidence of her involvement in kickback scheme, and evidence that she graduated her payments to patients based on what type of treatment they were receiving and spent lots of time at health

care facility, where she could see the patients and provision of care, or lack thereof. 18 U.S.C.A. §§ 1347, 1349. *United States v. Sanjar*, 853 F.3d 190, 102 Fed. R. Evid. Serv. 1361 (5th Cir. 2017).

[END OF SUPPLEMENT]

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Footnotes

- ¹ *In re Sidebotham*, 12 Cal. 2d 434, 85 P.2d 453, 122 A.L.R. 496 (1938); *People v. Federated Radio Corporation*, 216 A.D. 250, 214 N.Y.S. 670 (2d Dep't 1926), *aff'd*, 244 N.Y. 33, 154 N.E. 655 (1926).
- ² *Bishop v. General Motors Corp.*, 925 F. Supp. 294 (D.N.J. 1996) (applying New Jersey law).
As to consumer protection statutes, see *Am. Jur. 2d, Consumer and Borrower Protection* §§ 1 to 5.
- ³ *Fletcher v. Edwards*, 26 S.W.3d 66 (Tex. App. Waco 2000).
- ⁴ See, for example, 8 U.S.C.A. § 1306 (alien registration); 9 U.S.C.A. § 10 (arbitration award); 15 U.S.C.A. § 77q (sale of securities in interstate commerce or through the mails); 15 U.S.C.A. § 645 (false statements to obtain Small Business Act loans); 18 U.S.C.A. § 1001 (false statements or representations or concealment of material facts in a matter within the jurisdiction of any department or agency of the United States); 18 U.S.C.A. § 1002 (possession of false papers to defraud the United States); 18 U.S.C.A. § 1005 (bank entries, reports, and transactions); 18 U.S.C.A. § 1014 (false representations influencing action of federal lending agencies); 18 U.S.C.A. § 1028 (fraud and related activity in connection with identification documents and information); 18 U.S.C.A. §§ 1341, 1342 (use of the mails in execution of a scheme to defraud); 18 U.S.C.A. § 1343 (fraudulent communications); 18 U.S.C.A. § 1347 (knowing and willful scheme or artifice to defraud any health care benefit program, or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program in connection with the delivery of or payment for health care benefits, items, or services); 18 U.S.C.A. § 1348 (criminal penalties for defrauding shareholders of publicly traded companies; also penalizes fraud involving options and futures in commodities); 18 U.S.C.A. § 2314 (transportation of a person in interstate commerce incident to a scheme or artifice to defraud); 30 U.S.C.A. § 228 (denial of oil and gas leases to persons guilty of fraud); 38 U.S.C.A. §§ 1901 *et seq.* (National Service or Government Life Insurance); 38 U.S.C.A. § 2005 (unemployment compensation); 42 U.S.C.A. § 408 (Social Security); 47 U.S.C.A. § 312 (false statements in applications for radio licenses).
As to enforcement under the federal statute, generally, see *Am. Jur. 2d, False Pretenses* §§ 81 to 84.
- ⁵ *Rodowicz v. Massachusetts Mut. Life Ins. Co.*, 192 F.3d 162 (1st Cir. 1999), as amended, (Nov. 3, 1999).
As to the Employee Retirement Income Security Act of 1974, see *Am. Jur. 2d, Pensions and Retirement Plans* §§ 1 to 12.
- ⁶ § 463.
- ⁷ U.C.C. § 1-103, discussed in *Am. Jur. 2d, Commercial Code* § 14.

37 Am. Jur. 2d Fraud and Deceit II A Refs.

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II. Elements and Requisites

A. Basis of Action

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Research References

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A.L.R. Index, Concealment

A.L.R. Index, Constructive Fraud

A.L.R. Index, Fraud and Deceit

A.L.R. Index, Tricks and Trickery

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